

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

915U0589

HOUSE COMMERCE AND ENERGY

ENGROSSED NO. **SB 195** - 03/04/2013

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Rhoden, Begalka, Brown, Frerichs, Holien, Kirkeby, Krebs, Lederman, Lucas, Maher, Monroe, Olson (Russell), Rampelberg, Tidemann, and Vehle and Representatives Solum, Bartling, Bolin, Cronin, Duvall, Feickert, Gibson, Gosch, Greenfield, Hawks, Hawley, Heinemann (Leslie), Heinert, Hunhoff (Bernie), Killer, Lust, Magstadt, Otten (Herman), Parsley, Peterson, Rounds, Schoenfish, Soli, Tyler, Werner, and Wismer

1 FOR AN ACT ENTITLED, An Act to establish certain incentives for wind energy facilities, to
2 revise the amount that may be rebated for the gross receipts tax on electricity produced on
3 wind farms, to provide a penalty for filing a false affidavit, and to make a continuous
4 appropriation.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. Terms used in this Act mean:

- 7 (1) "Construction date," the first date earth is excavated for the purpose of constructing
8 a project;
- 9 (2) "Completed the project" or "completion of the project," the first date when the project
10 is commercially generating electricity for sale;
- 11 (3) "Department," the Department of Revenue;
- 12 (4) "Person," any individual, firm, copartnership, joint venture, association, cooperative,



limited liability company, limited liability partnership, corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit;

(5) "Project," the construction of a wind energy facility at a single site. The project shall consist of a single project rather than an ongoing, systematic process of upgrading, retooling, or modernizing an existing wind energy facility;

(6) "Project cost," the amount paid by the project owner in money, credits, property, or other money's worth for a project. Project costs include the cost of the blades, wind turbine generators, towers, bases, foundations, power collection systems, electric interconnection systems, substations, and amounts paid to contractors. Project costs do not include land acquisition costs, easement costs, environmental impact statement costs, wind study costs, crop damage payments, consulting services, insurance, administrative costs, employee costs, legal fees, or any costs not paid by the project owner;

(7) "Secretary," the secretary of the Department of Revenue;

(8) "Wind energy facility," any new facility or facility expansion that:

(a) Consists of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity, and is subject to the tax imposed by §§ 10-35-18 and 10-35-19; and

(b) The construction of which is subject to contractors' excise tax pursuant to chapter 10-46A or 10-46B.

Section 2. The purpose of this Act is to provide a mechanism for an incentive payment to a person that constructs a wind energy facility. To receive an incentive payment as provided by this Act, the person must timely file an application as required by section 3 of this Act, the

1 person must receive a permit from the department pursuant to section 4 of this Act, the person
2 must timely file the affidavit of incentive payment as required by section 5 of this Act, and the
3 person shall comply with the provisions of this Act to qualify for the incentive payment.

4 No project with a construction date before July 1, 2013, may receive an incentive payment
5 as provided by this Act. No cost incurred prior to July 1, 2013, may be included as a project cost
6 for the purpose of this Act.

7 Section 3. Before any person receives any incentive payment as provided in this Act, the
8 person shall file an application with the department. The application may be filed no sooner than
9 ninety days before the construction date, or no later than ninety days after the construction date.
10 No person may receive any incentive payment as provided by this Act if the application is not
11 timely filed with the department.

12 The application shall include the following information:

- 13 (1) The project owner's name and contact information;
- 14 (2) The general description of the project;
- 15 (3) The construction date of the project;
- 16 (4) The projected date for completion of the project;
- 17 (5) The projected megawatt production of the project;
- 18 (6) The number of completed wind towers to be included in the project;
- 19 (7) The proposed nameplate capacity for each wind turbine generator in the project;
- 20 (8) The estimated project costs;
- 21 (9) The location of the project;
- 22 (10) The legal description of the project location;
- 23 (11) A list of the contractors and subcontractors that will perform work on the project; and
- 24 (12) Any other information that the department may require.

1 The application shall be on a form prescribed by the secretary. The application shall be
2 signed by the project owner under penalty of perjury, and signed under oath before a notary
3 public. No application may include more than one project.

4 Section 4. Upon approval of the application, the secretary shall issue a permit entitling the
5 person to submit an affidavit for incentive payment as provided by section 5 of this Act. The
6 permit and incentive payment are not assignable or transferable except as collateral or security
7 pursuant to chapter 57A-9. However, the secretary may permit the assignment or transfer of a
8 permit and incentive payment if the initial permit holder entity reorganizes into a new entity, if
9 the new entity and the initial entity share common ownership, and the reorganization was
10 completed solely for a legitimate business purpose. The new entity shall file with the department
11 an amended application within sixty days of the reorganization.

12 Section 5. Any person that has timely filed the application and is holding a permit issued by
13 the department, and has completed the project, shall file an affidavit for incentive payment with
14 the department.

15 The affidavit for incentive payment shall contain the following information:

- 16 (1) The project owner's name and contact information;
- 17 (2) The general description of the project;
- 18 (3) The date of completion of the project;
- 19 (4) The final megawatt production of the project;
- 20 (5) The number of completed wind towers in the project;
- 21 (6) The final nameplate capacity for each wind turbine generator in the project;
- 22 (7) The final project costs;
- 23 (8) The amount of South Dakota sales tax, use tax, and contractors excise tax paid by the
24 project owner for the construction of the project;

- 1 (9) The location of the project;
- 2 (10) The legal description of the project location;
- 3 (11) A list of the contractors and subcontractors that performed work on the project; and
- 4 (12) Any other information that the department may require.

5 The affidavit for incentive payment shall be on a form prescribed by the secretary. The
6 affidavit for incentive payment shall be signed by the project owner under penalty of perjury,
7 and signed under oath before a notary public. No affidavit for incentive payment may include
8 more than one project.

9 Section 6. The affidavit for incentive payment as required by section 5 of this Act shall be
10 filed no later than six months after the completion of the project. If the affidavit for incentive
11 payment is not timely filed, the person is ineligible for any incentive payment provided by this
12 Act. If the person filing the affidavit for incentive payment knowingly makes a materially false
13 statement or report, the person is ineligible for any incentive payment provided by this Act.

14 No project costs that occur after three years from the construction date are eligible to be
15 included in the final project cost determination for any incentive payment provided by this Act.

16 Section 7. After the timely receipt of a completed affidavit for incentive payment, the
17 department shall provide an incentive payment to the project owner based upon the final project
18 costs. The amount of the incentive payment is based on the amount of the final project costs
19 rounded down to the nearest million dollars and shall be equal to two and three-quarters percent
20 of the final project costs as rounded.

21 No incentive payment provided by this section may be in excess of the South Dakota sales
22 tax, use tax, and contractor's excise tax paid by the project owner on project costs for the
23 construction of the project. The department shall tender the incentive payment by electronic
24 funds transfer. The department may not pay interest on the incentive payment to the project

1 owner. The department shall pay the incentive payment to the project owner within ninety days
2 of the receipt of the affidavit for incentive payment. If the department requests additional
3 documents or information from the project owner, the ninety day period shall begin to run from
4 the date of receipt of the additional documentation or information.

5 If the department discovers, after the incentive payment has been made, that the amount of
6 the final project cost was inaccurately determined and the incentive payment exceeded the
7 correct incentive amount, the project owner shall return to the department the excess incentive
8 payment. If the project owner fails to return the excess incentive payment to the department
9 within thirty days of notice of the excess incentive payment, the excess incentive payment shall
10 constitute a debt to the state and a lien in favor of the state upon all property and rights to
11 property whether real or personal belonging to the project owner and may be recovered in an
12 action of debt by the department.

13 Section 8. There is hereby created the wind energy incentive fund for the sole purpose of
14 making incentive payments pursuant to the provisions of this Act.

15 The department shall deposit into the wind energy incentive fund sufficient sales and use
16 taxes imposed by chapters 10-45 and 10-46 and contractors excise taxes imposed by chapters
17 10-46A and 10-46B to make the incentive payments required by the provisions of this Act.

18 The funds in the wind energy incentive fund are continuously appropriated to the department
19 to make incentive payments pursuant to this Act. The department shall deposit any interest
20 earned into the general fund. The department shall deposit any moneys set aside for a specific
21 incentive payment remaining in the wind energy incentive fund after the department makes the
22 specific incentive payment, or the specific project becomes ineligible for the incentive payment,
23 into the general fund.

24 Section 9. Any person receiving an incentive payment for a project pursuant to the

1 provisions of this Act may not receive any other refund, incentive payment, lower tax rate,
2 payment, or other incentive from the department for that project.

3 Section 10. Any person who knowingly makes any material false statement in the
4 application filed pursuant to section 3 of this Act or who files a fraudulent application pursuant
5 to section 3 of this Act is guilty of a Class 6 felony. Any person who knowingly makes any
6 material false statement in the affidavit for incentive payment filed pursuant to section 5 of this
7 Act or who files a fraudulent affidavit pursuant to section 5 of this Act is guilty of a Class 6
8 felony.

9 Section 11. If the project is located on land that is included within the agreement area of a
10 tax collection agreement entered into by the state and an Indian tribe pursuant to chapter
11 10-12A, the department is only obligated to pay a percentage of the incentive payment as
12 required by this Act equal to the percentage of funds that the department retains pursuant to the
13 terms of the tax collection agreement.

14 Section 12. The name of any person that receives an incentive payment as provided by this
15 Act and the amount of the incentive payment is public information and shall be available and
16 open to public inspection as provided in § 1-27-1.

17 Section 13. Any person aggrieved by the denial in whole or in part of an incentive payment
18 claimed under the provisions of this Act, may within thirty days after service of the notice of
19 such denial by the secretary, demand and is entitled to a hearing, upon notice, before the
20 secretary. The hearing shall be conducted pursuant to chapter 1-26.

21 Section 14. The secretary may promulgate rules, pursuant to chapter 1-26, concerning the
22 procedures for applying for the incentive payment and the requirements necessary to qualify for
23 the incentive payment.

24 Section 15. That § 10-35-22 be amended to read as follows:

1 10-35-22. Any company requiring transmission lines or wind farm collector systems or both
2 in South Dakota for a wind farm or a power generation facility as described in § 10-35-1.3, is
3 eligible for a partial rebate of the tax paid under § 10-35-19. The company shall apply for the
4 rebate on forms prescribed by the secretary. The total amount of tax rebated shall be no more
5 than fifty percent of the cost of the transmission lines and wind farm collector systems in South
6 Dakota.

7 The maximum rebate any company may receive in one year is ninety percent of the tax paid
8 under § 10-35-19 for the first five years and fifty percent of the tax paid under § 10-35-19 for
9 the next five years. The secretary shall determine when the wind farm is commercially
10 operational. No wind farm may receive a rebate under this section after this ten year period.

11 The secretary shall rebate the tax from the wind energy tax fund prior to the distribution of
12 any money as provided in § 10-35-21. The secretary may provide a tax credit, in lieu of full
13 payment of the gross receipts tax, of up to eighty percent of the transmission rebate value that
14 has been approved by the secretary. Any revenue in the wind energy tax fund after the rebates
15 are paid shall be deposited in the property tax reduction fund.

16 No company may receive any rebate pursuant to this section if the company's wind farm first
17 generates electricity after July 1, 2013. No company may receive any rebate pursuant to this
18 section if the company receives the incentive payment as provided by section 7 of this Act.

19 Section 16. That § 10-35-21 be amended to read as follows:

20 10-35-21. The secretary shall distribute all of the tax deposited in the wind energy tax fund
21 pursuant to § 10-35-18 and twenty percent of the tax deposited in the wind energy tax fund
22 pursuant to § 10-35-19 to the county treasurer where the wind farm is located. If the wind
23 energy tax fund contains less than twenty percent of the gross receipts tax from § 10-35-19, due
24 to the transmission line rebate under § 10-35-22, the secretary shall distribute the remainder of

1 funds after the rebate to the county treasurer where the wind farm is located. If a wind farm is
2 located in more than one county, each county shall receive the same percentage of the tax as the
3 percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes, the
4 county auditor shall apportion the tax among ~~all taxing jurisdictions~~ the school districts, the
5 county, and the organized townships where a wind tower is located. The tax shall be
6 ~~apportioned in the same manner as agricultural real property taxes would have been apportioned~~
7 ~~between the taxing jurisdictions~~ by the county auditor by allocating fifty percent of the tax to
8 the school district where each wind tower is located, fifteen percent to the organized township
9 where each wind tower is located, and thirty-five percent to the county. If a wind tower is
10 located in a township that is not organized, the unorganized township's share of the tax for that
11 wind tower is allocated to the county. The secretary shall distribute the money to the counties
12 on or before the first day of May.